

COMMISSIONER'S DIRECTIVE #33

AUGUST 2011

(Replaces Bulletin #33 dated November 2006)

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Changes in the Collection Process and Protest of Tax Liabilities

REFERENCE: IC 6-3-4-8.1; IC 6-8.1-5-1; IC 6-8.1-8-1.7; IC6-8.1-8-2; IC 6-8.1-8-3; IC 6-8.1-8-15; and IC 6-8.1-9-2

I. INTRODUCTION

This directive is intended to provide guidance on the collection process and the protest of tax liabilities.

II. COLLECTION PROCESS

IC 6-3-4-8.1 provides that if a withholding agent is not withholding, reporting, or remitting the proper amount of tax, the Department may require the withholding agent to make periodic payments and file an informational return on a more frequent basis than the normal reporting periods.

IC 6-8.1-8-1.7 provides that the Department may require a person who is on a payment plan for outstanding sales or withholding tax liabilities to make these periodic payments by electronic funds transfer through an automatic withdrawal from the person's account at a financial institution.

IC 6-8.1-8-2 provides that when a demand notice for payment is issued by the Department to a taxpayer, the demand notice is required to list the statutory authority for the Department to levy against a person's property that is held by a financial institution. This section also provides that the county sheriff can no longer release a judgment arising from a tax warrant issued by the Department.

This section also provides that a lien on real property is void if the person owing the tax provides written notice to the Department to file an action to foreclose on the lien and the

Department fails to file an action to foreclose on the lien with 180 days after receiving the notice. After 180 days, the taxpayer may file an affidavit with the county clerk that the Department has not taken action to foreclose on the lien. Upon receipt of the affidavit, the circuit court clerk shall make an entry showing the release of the judgment lien in the judgment record for tax warrants.

IC 6-8.1-8-3 provides that a sheriff is required to return a tax warrant after 120 days unless the taxpayer has established a payment plan with the sheriff and the sheriff's electronic database regarding tax warrants is compatible with the Department's database. If the sheriff's database is not compatible with the Department's database, the sheriff is not allowed to establish payment plans with the taxpayer.

IC 6-8.1-8-3 also provides that a sheriff still has collection authority if the taxpayer has taken an action to have the Department foreclose on the lien on real property and the judgment has been released under IC 6-8.1-8-2. IC 6-8.1-8-8 also provides that the Department still has authority through its collection agencies to levy or garnish for a tax liability where the taxpayer has had a lien on real property released as a result of the Department not foreclosing on the lien.

IC 6-8.1-8-15 provides that if an apparent owner of unclaimed property (as defined in IC 32-34-1-21) is subject to a tax warrant, the Department may levy on the unclaimed property by filing a claim with the attorney general.

III. PROTEST OF TAX LIABILITIES

IC 6-8.1-5-1 provides that a letter of findings includes a supplemental letter of findings. The amendment also provides that a taxpayer has 60 days to appeal to the tax court if the taxpayer disagrees with a letter of findings, and 60 days if the department issues a denial of the person's timely request for a rehearing on the letter of findings.

The amendment also provides that a taxpayer has 60 days to protest a proposed assessment issued by the Department. Prior to Jan. 1, 2011, the taxpayer had 45 days to protest the proposed assessment.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive, flowing style with a large loop at the beginning of the first name.

John Eckart
Commissioner